

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, : CASE NO. 5:09 CR 0276
: Plaintiff :
: :
: -vs- : ORDER ADOPTING REPORT AND
: RECOMMENDATION AND DENYING
: AS MOOT DEFENDANT'S MOTION
: FOR DIRECT TRAVEL
: Defendant :

UNITED STATES DISTRICT JUDGE LESLEY WELLS

This matter was referred to United States Magistrate Judge James S. Gallas to convene a hearing for the purpose of returning a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B), on Ms. Cha's competency. (Doc. 22).

On 3 December 2009, Magistrate Judge Gallas held a competency hearing, pursuant to 18 U.S.C. §§ 4241(c) and 4247(d), and prepared an uncontested (Doc. 27) Report and Recommendation ("R&R") for this Court. The R&R recommends finding Ms. Cha suffers from a mental disease or defect rendering her mentally incompetent. (Doc. 28, p. 3). Based on the uncontested report from the evaluating forensic psychologist, Y. Tami Yanez, Magistrate Judge Gallas found by a preponderance of the evidence that Ms. Cha is unable to understand the nature and consequences of the proceedings against her and to assist properly in her defense. Id. (Doc. 27, Joint Stipulation as to the Admissibility of Dr. Yanez's Forensic Report).

The Court adopts Magistrate Judge Gallas' uncontested R&R finding Ms. Cha

mentally incompetent. Pursuant to § 4241(d), Ms. Cha is committed to the custody of the Attorney General for hospitalization to receive treatment in a suitable facility. To satisfy that provision, Ms. Cha will remain at FMC - Carswell. Ms. Cha will remain at that facility for treatment and evaluation to determine "whether there is a substantial probability that in the foreseeable future [she] will attain the capacity to permit the proceedings" against her to go forward. 18 U.S.C. § 4241(d)(1).

The director of the Carswell facility will certify an evaluation to this Court regarding Ms. Cha's condition by 12 March 2010, pursuant to 18 U.S.C. §§ 4241(d) & 4246. As Ms. Cha will not, at this time, be transported from FMC - Carswell, the Defendant's Motion for Direct Travel (Doc. 29) is moot.

IT IS SO ORDERED.

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE

Date: 15 December 2009